

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID BONIELLA,)	
Plaintiff,)	
)	
vs)	Civil Action No. 07-1314
)	
COMMISSIONER OF SOCIAL)	
SECURITY,)	
Defendant.)	

ORDER

On October 2, 2007, Plaintiff, David Boniella, filed a complaint against Defendant, the Commissioner of Social Security, pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), for review of the Commissioner's final determination disallowing his claim for Supplemental Security Income Benefits under Sections 1614 and 1631 of the Act, 42 U.S.C. § 1381.

The record does not reflect that the complaint was ever served on the Defendant, and more than 120 days have passed since the filing of the complaint. In relevant part, Federal Rule of Civil Procedure 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant....

On February 5, 2008, an order was entered, allowing the Plaintiff until February 25, 2008 to show cause why this case should not be dismissed for his failure to make service upon the Defendant. The order noted that, although Plaintiff had filed an appeal of this Court's order denying his motion for appointment of counsel and for a settlement hearing, the appeal did not excuse him from the requirement of making service within 120 days as required by Rule 4(m). It

is noted that, on February 6, 2008, the Court of Appeals dismissed his interlocutory appeal for lack of jurisdiction.

Plaintiff has another interlocutory appeal pending in the Court of Appeals, namely his February 4, 2008 appeal (Docket No. 21) of this Court's denial of his "motion for presumptive SSI disability payments" (Docket No. 14). Nevertheless, the appeal does not excuse him from the requirement of making service within 120 days as required by Rule 4(m).

IT IS HEREBY ORDERED that this case is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

s/Robert C. Mitchell
ROBERT C. MITCHELL
United States Magistrate Judge

Dated: February 27, 2008